

No. 13126

United States
Court of Appeals
for the Ninth Circuit.

CHRISTINE ALLEN,

Appellant,

vs.

RALPH MEYER, Trustee in Bankruptcy of the
Estate of Joseph E. Allen, Bankrupt,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

NOV 30 1951



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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Answer to Receiver's Petition for Turnover	12
Answer to Receiver's Petition to Determine Title to Personal Property and Order to Show Cause	26
Answer to Trustee's Petition for Restraining Order and Order to Show Cause.....	25
Certificate of Clerk.....	86
Exhibits, Respondent's:	
No. 1—Property Settlement Agreement...	49
2—Interlocutory Decree of Divorce...	63
3—Final Decree of Divorce.....	65
4—Complaint for Damages.....	67
Findings of Fact and Conclusions of Law.....	31
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	48
Order Filed July 10, 1951.....	39
Order on Petition for Review	47

INDEX	PAGE
Order to Show Cause Filed May 24, 1951.....	11
Order to Show Cause Filed June 12, 1951... ..	20, 24
Petition to Determine Title to Personal Prop- erty and Order to Show Cause.....	17
Petition for Review of Referee's Order Quiet- ing Title.....	41
Ex. A—Order	45
Petition for Restraining Order and Order to Show Cause.....	22
Proceedings to Determine Title and Order to Show Cause.....	8
Referee's Certificate on Petition for Review of Order in Re Title to a Certain Drug Store Business	3
Statement of Points and Designation of Por- tions of Record to Be Printed.....	89

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

HARRY R. ROBERTS,
JESS G. SUTLIFF,
634 S. Spring St.,
Los Angeles 14, Calif.

For Appellee:

DOROTHY KENDALL,
416 West 8th St.,
Los Angeles 14, Calif.

In the District Court of the United States for the
Southern District of California, Central Division

In Bankruptcy No. 52057-HW

In the Matter of:
JOSEPH E. ALLEN,

Bankrupt.

REFEREE'S CERTIFICATE ON PETITION
FOR REVIEW OF ORDER IN RE TITLE
TO A CERTAIN DRUG STORE BUSINESS

To the Honorable Harry C. Westover, Judge of the
Above-Entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of the said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby certify to the following:

Christine Allen has duly filed herein her petition for the review of an order made by your Referee in this matter on July 10, 1951, in which he decreed that a certain drug store business known as Jerry's Drugstore, in Lone Pine, California, was an asset of the above-entitled estate and that the said Christine Allen had no interest therein. [4*]

The Proceedings

The bankrupt herein and the said Christine Allen were formerly husband and wife, their marriage having been terminated by a final decree of divorce

*Page numbering appearing at foot of page of original Certified Transcript of Record.

on June 26, 1950. On June 8, 1949, they entered into a property settlement agreement in which, among other things, they agreed that the aforesaid drug store business which they owned should be continued to be owned by them as community property, but that if either of them obtained an interlocutory decree of divorce that they then should own the said business as tenants in common, each owning an undivided one-half interest. The wife, Christine Allen, obtained an interlocutory decree of divorce on June 9, 1949.

The aforesaid drug store business had always been operated by the bankrupt and it was provided in the aforesaid property settlement agreement that it should remain under his active management and control. The bankrupt continued the operation of the business until February 26, 1951, when he ceased operations. However, he retained possession of the assets of the business until they were turned over to a receiver in this bankruptcy case.

The wife, Christine Allen, commenced an action against the bankrupt for damages or alimony. The bankrupt filed an answer and a cross-complaint in said action, praying that the aforesaid drug store business be sold and the proceeds be divided. No trial has been had in the said action.

Later the bankrupt filed a petition in this Court under section 5b of the Bankruptcy Act, in which he alleged that a partnership existed between himself and Christine Allen in the operation of the said business, and in which he prayed that such partnership be adjudged a bankrupt. Christine Allen re-

sisted the said petition upon the ground that she [5] was not a partner. Her position was sustained and the said petition was dismissed.

Thereafter, the bankrupt commenced this pending bankruptcy proceeding in which he alone is the bankrupt. Ralph Meyer was appointed Receiver in the case and he is now the trustee in bankruptcy in the matter. In the aforesaid partnership proceeding it has been made clear that Christine Allen claimed that she was the owner of an undivided one-half interest in and to all of the assets of the aforesaid business and that her said interest in the said assets was free and clear of the claims of creditors who had extended credit to the business.

In view of the claims so made by Christine Allen, the receiver in this case realized that no sale of the assets of the said business could safely be made in this bankruptcy proceeding until a determination was made as to the extent and character of the interest of this estate in such assets. Accordingly, the receiver commenced proceedings in this Court to test the validity and the enforceability of the claims made, as aforesaid, by Christine Allen. A number of pleadings were filed and several hearings were had, and at the conclusion of the matter your Referee held: (1) That title to the assets of the said business should be quieted in the trustee in this case; (2) That the interest which Christine Allen acquired under the aforesaid property settlement agreement was an interest in the net worth of said business and not an interest in the assets thereof; and (3) that the transfer of the said in-

terest to Christine Allen is void as against the creditors and the trustee herein under section 3440 of California's Civil Code, for the reason that it was not accompanied by an immediate delivery by the bankrupt [6] to Christine Allen of the assets of the said business, and was not followed by an actual and continued change of possession of such assets. On July 10, 1951, your Referee filed his findings of fact and conclusions of law and his order in the premises, and it is from the said order that this review is taken.

The Questions Presented

The questions presented by this review are the following:

1. Was your Referee correct in holding that the interest acquired by Christine Allen under the property settlement agreement here involved was an interest in the net worth of the business here in question and not an interest in the assets thereof?

2. Was your Referee correct in holding that the transfer of the said interest to Christine Allen is void as against the creditors and the trustee herein upon the ground that it was not accompanied by the change of possession of the assets of the afore-said business which was required by section 3440 of California's Civil Code?

The Evidence

It is unnecessary to transmit any of the evidence in this case other than the exhibits which are going

up with this certificate. The facts are not in dispute, and the position taken by the petitioner on review rests entirely upon the provisions of the property settlement agreement, a photostat of which is in evidence as respondent's Exhibit No. 1 in the case. [7]

Referee's Findings of Fact, Conclusions
Of Law, and Order

The originals of your Referee's Findings of Fact and Conclusions of Law and of his Order in this matter are going up with this certificate.

Papers Submitted

The following papers are herewith transmitted:

1. Proceedings to Determine Title and Order to Show Cause, filed May 24, 1951.
2. Order to Show Cause, filed May 24, 1951.
3. Answer to Receiver's Petition for Turnover, filed June 7, 1951.
4. Amended Answer to Receiver's Petition for Turnover, filed June 11, 1951.
5. Petition to Determine Title to Personal Property & Order to Show Cause, filed June 12, 1951.
6. Order to Show Cause, filed June 12, 1951.
7. Petition for Restraining Order and Order to Show Cause, filed June 12, 1951.
8. Order to Show Cause, filed June 12, 1951.

9. Answer to Trustee's Petition for Restraining Order and Order to Show Cause, filed June 15, 1951.

10. Answer to Receiver's Petition to Determine Title to Personal Property and Order to Show Cause, filed June 15, 1951.

11. Findings of Fact and Conclusions of Law, filed July 10, 1951.

12. Order, filed July 10, 1951.

13. Petition for Review of Referee's Order Quieting Title, filed July 18, 1951. [8]

14. Respondent's Exhibits 1, 2, 3 and 4.

Respectfully submitted this 20th day of July, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed July 20, 1951., U.S.D.C. [9]

[Title of District Court and Cause.]

PROCEEDINGS TO DETERMINE TITLE AND
ORDER TO SHOW CAUSE

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

Comes now your petitioner, Ralph Meyer, and respectfully represents, as follows:

I.

That he is the duly appointed, qualified and acting Receiver in Bankruptcy herein.

II.

That heretofore and prior to the filing of the proceedings herein, Joseph E. Allen was divorced from Christine Allen in the Superior Court of the State of California, which divorce was on or about June, 1949. Prior to the granting of said divorce, the parties executed a Property Settlement Agreement whereby it was agreed that upon entry of an interlocutory decree of divorce, the parties theretofore owning as community property would thence own the drugstore business as tenants in common, with full management and control in the above bankrupt; that said Property Settlement Agreement was recorded on or about December, 1950; that your petitioner is informed and believes and, [10] therefore, alleges that, no notice of intention to transfer, hypothecate, sell or assign any portion of said business was filed by either of the parties prior to the execution of said Property Settlement Agreement, or prior to the granting of said interlocutory decree of divorce.

III.

That there was a creditor in existence of the above-named bankrupt on the 28th day of February, 1949, which said creditor remains unpaid and was unpaid as of the date of the filing of the proceedings herein; that said creditor is Lester A. Johnson; that the debt owed by bankrupt and Christine Allen

to said Johnson is the sum of \$3600.00, payable on demand, together with interest at 5% per annum from February 28, 1949; that said indebtedness is evidenced by a promissory note executed by the above-named bankrupt and Christine Allen.

IV.

That your petitioner alleges that the above-named bankrupt and Christine Allen failed to comply with the necessary requests of the Civil Code of the State of California, Section 3440 thereof, and that as a result said purported transfer is void as to creditors.

V.

That said Christine Allen contends that she is the owner of and entitled to possession of one-half of all of the assets of the aforesaid business known as Jerry's Drugstore, located at 206 North Main Street, Lone Pine, California, and is entitled to take said assets free and clear of any and all creditors claims; that your petitioner contends that said purported transfer by virtue of the aforesaid Property Settlement Agreement is void as to creditors by reason of the failure to comply with the appropriate laws of the State of California relating to transfer of personal property, and that title to said property should be quieted in [11] your petitioner.

Wherefore, your petitioner prays that an Order be made and entered herein, quieting title in and to all of the personal property located at 206 North Main Street, Lone Pine, California, and belonging

to or used in connection with that business known as Jerry's Drugstore; that an Order to Show Cause be issued directing Christine Allen to appear before this Honorable Court and show cause, if any she has, why title to said personal property should not be quieted in your petitioner.

Dated this 24th day of May, 1951.

/s/ RALPH MEYER,
Receiver in Bankruptcy.

/s/ DOROTHY KENDALL,
Attorney for Receiver.

Duly verified.

[Endorsed]: Filed May 24, 1951, Referee. [12]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the verified petition of Ralph Meyer, Receiver in Bankruptcy herein, and good cause appearing therefor:

It Is Hereby Ordered that, Christine Allen appear and show cause, if any she has, before the undersigned Referee in Bankruptcy at his courtroom in the Federal Building, Temple and Spring Streets, Los Angeles, California, on the 11th day of June, 1951, at the hour of 2:00 o'clock p.m., why title to the personal property of the above estate should not be quieted in Receiver herein.

It Is Further Ordered that service of this Order

to Show Cause, together with a copy of the petition upon which the same is issued, may be made by serving the respondent by mail, postage prepaid; that not less than five days prior to the hearing of this Order to Show Cause shall be sufficient service.

It Is Further Ordered that, if respondent desires to contest the petition upon which this Order to Show Cause is issued, she should file an Answer setting forth the grounds thereof two days prior to the hearing thereon.

Dated this 24th day of May, 1951.

/s/ BENNO M. BRINK.

[Endorsed]: Filed May 24, 1951, Referee. [14]

[Title of District Court and Cause.]

AMENDED ANSWER TO RECEIVER'S
PETITION FOR TURNOVER

(Christine Allen)

To Benno M. Brink, Esq., Referee in Bankruptcy:

Christine Allen answers the petition of Ralph Meyer verified May 24, 1951, praying for a turnover of property as follows:

I.

Answering the allegations contained in paragraph II thereof, Respondent admits that an interlocutory decree of divorce was duly made and entered on or about the month of June of 1949 by the Superior Court of the State of California, in and for the County of Inyo, and that by the terms thereof it

was ordered, adjudged and decreed that your Respondent was entitled to a final decree of divorce from the said bankrupt when one year shall have elapsed from the entry of said decree; admit that prior to the making and entering of aforesaid interlocutory decree of divorce your Respondent and said bankrupt made, executed and delivered a property settlement agreement dated June 8, 1949; [21] admit that by the terms of said property settlement agreement it was agreed by and between your Respondent and said bankrupt that they then owned that certain drug business located in the Town of Lone Pine, County of Inyo, State of California, as community property, and further that in the event an interlocutory decree of divorce was obtained by either of the parties hereto then said parties should thereafter own said business as tenants in common, each owning an undivided one-half interest, and allege in this connection that by the terms of the aforesaid interlocutory decree of divorce said property settlement agreement was approved and confirmed by the court and each of the parties thereto was ordered by said Court to perform the same; admit that said property settlement agreement was recorded in the Office of the County Recorder on or about December, 1949; admit that no notice of intention to transfer, hypothecate, sell or assign any interest in said business was filed by either your Respondent or said bankrupt prior to the execution of said property settlement agreement or prior to the granting of said interlocutory decree of divorce and in this

connection allege that the same was not necessary or required by law; except as expressly hereinabove admitted Respondent denies each and every allegation therein contained and the whole thereof.

II.

Answering the allegations contained in paragraph III denies that said promissory note was payable on demand and alleges in this connection that said promissory note was due and payable on the 28th day of February, 1951.

III.

Denies each and every allegation contained in paragraph IV of said petition.

IV.

Answering the allegations contained in paragraph V [22] thereof, admits that your Respondent claims that she is the owner of and entitled to the possession as a tenant in common of one-half of all of the assets of the business known as Jerry's Drugstore located in the Town of Lone Pine, California, and that her title and right thereto is free and clear of any claims of any persons whatsoever; denies each and every allegation contained in said paragraph not expressly herein admitted.

As a First, Separate and Affirmative Defense Your Respondent Alleges:

I.

That there is a non-joinder of necessary parties herein in that the trustee for the bankrupt estate is not made a party hereto.

As a Second, Separate and Affirmative Defense
Your Respondent Alleges:

I.

That she is the owner as a tenant in common with said bankrupt, Joseph E. Allen, of the drug business known as Jerry's Drugstore situated in the Town of Lone Pine, County of Inyo, State of California; that she has claimed and now claims the ownership of said interest openly, notoriously, and adversely since the entry of the aforesaid interlocutory decree of divorce; that since the entry of the aforesaid interlocutory decree of divorce, in the month of June, 1949, she has claimed, and now claims, the ownership as a tenant in common of an interest in said drug business, which claim has been, and is now, made openly, notoriously and adversely to said bankrupt, his trustee in bankruptcy, the receiver of the bankrupt estate and the entire world; that this court has no jurisdiction over the subject matter of said petition, the title of your Respondent to said property [23] or the rights or claims to or in said property of your Respondent.

As a Third, Further and Affirmative Defense, Your
Respondent Alleges:

I.

That there is now pending an action in the Superior Court of the State of California in and for the County of Inyo entitled "Christine Allen, Plaintiff and Cross-Defendant, vs. Joseph E. Allen,

Defendant and Cross-Complainant," being action No. 5025 of the proceedings of said Court, that there have been filed in said action by your Respondent a complaint and answer to a cross-complaint and by said defendant, the bankrupt herein, an answer and a cross-complaint; that said action was commenced about the month of January, 1951, by your Respondent by the filing of said complaint in said Court and the issuance by said Court of summons thereon; that the said pleadings in said cause in part pray for a partition of said drug business known as Jerry's Drugstore situated in the Town of Lone Pine, County of Inyo, State of California; that said cause is now set for trial in said Court for the 10th day of July, 1951, at the hour of 10:00 o'clock a.m. of said day; that by reason thereof another action is pending involving the same issues as are purportedly raised in the petition on file herein.

Wherefore Christine Allen prays that said petition be denied without costs.

/s/ CHRISTINE ALLEN,
Respondent.

JESS G. SUTLIFF, and
HARRY R. ROBERTS,

By /s/ HARRY R. ROBERTS,
Attorneys for espondent.

Duly verified.

[Endorsed]: Filed June 11, 1951, Referee. [24]

[Title of District Court and Cause.]

PETITION TO DETERMINE TITLE TO PERSONAL PROPERTY & ORDER TO SHOW CAUSE

To the Honorable Benno M. Brink, Referee in Bankruptcy:

Comes now your petitioner, Ralph Meyer, and respectfully represents, as follows:

I.

That he is the duly appointed, qualified and acting Trustee in Bankruptcy herein.

II.

That heretofore and prior to the filing of the proceedings herein, Joseph E. Allen was divorced from Christine Allen in the Superior Court of the State of California on or about June, 1949. Prior to the granting of said divorce, the parties executed a Property Settlement Agreement whereby it was agreed that upon entry of an interlocutory decree of divorce, the parties theretofore owning as community property would thence own the drugstore business as tenants in common, with full management and control in the above bankrupt; that said Property Settlement Agreement was recorded on or about December, 1950; that your petitioner is informed [26] and believes and, therefore, alleges that, no notice of intention to transfer, hypothecate, sell or assign any portion of said business was filed by either of the parties prior to the execution of

said Property Settlement Agreement, or prior to the granting of said interlocutory decree of divorce.

III.

That said Christine Allen contends that she is the owner of and entitled to possession of one-half of all of the assets of the aforesaid business known as Jerry's Drugstore, located at 206 North Main Street, Lone Pine, California, and is entitled to take said assets free and clear of any and all creditors' claims.

IV.

That your petitioner alleges Christine Allen has no right, title nor interest in or to the following:

1. That certain building known as 206 North Main Street, Lone Pine, California, which building was purchased by the bankrupt herein with funds acquired by him subsequent to the divorce of the parties hereto; that said building is by the terms of the lease executed by and between the bankrupt, as Lessee, and the Department of Water and Power of the City of Los Angeles, as Lessor, removable upon the termination of the lease.

2. The Alcoholic Beverage License issued for the said premises, together with all of the stock in trade of alcoholic beverages for the reason that said license is issued solely to the bankrupt herein; that no secret interests or partnerships are permitted by the California Alcoholic Beverage Control Act; that all persons having an interest in such a license

must be named as licensees; that no person other than a licensee may hold or sell any alcoholic beverages; that no application to transfer said license from the bankrupt alone to the bankrupt and respondent herein jointly was ever filed with the California State Board of Equalization. [27]

V.

That by the terms of the Property Settlement Agreement executed between the bankrupt and said Christine Allen as hereinabove mentioned, respondent Christine Allen expressly designated and appointed the bankrupt herein as her agent for the purpose of managing, operating and controlling the said drugstore business; that in pursuance of said agency, that bankrupt herein operated said drugstore up to and including February 26, 1951, incurring in connection therewith obligations to creditors, all as set forth on the Schedules of the said bankrupt.

That by the creation of said agency, your petitioner alleges Christine Allen is estopped to assert any interest in or to any of the assets of said drugstore business in violation of and adverse to the rights of creditors.

That if it is adjudicated by this Honorable Court that Christine Allen has any interest in or to any of the assets of said drugstore business that the same be deemed subordinate and subject to the claims of all of said creditors, and that your petitioner may be ordered to sell all of said assets free and clear of any and all claims of said Christine Allen.

Wherefore, your petitioner prays that a hearing be had and that an Order be made and entered herein, determining and adjudicating the rights of said Christine Allen in and to the assets of Jerry's Drugstore located at 206 North Main Street, Lone Pine, California; that said Christine Allen be ordered to appear and assert her claims and that if it is found any right or title or interest to said estate's assets be in Christine Allen, that the same be declared subordinate to the rights of the creditors whose valid claims are filed in this proceeding.

Dated this 12th day of June, 1951.

/s/ RALPH MEYER,

Trustee in Bankruptcy.

/s/ DOROTHY KENDALL,

Attorney for Trustee.

Duly verified.

[Endorsed: Filed June 12, 1951, Referee. [28]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the verified petition of Ralph Meyer, Trustee in Bankruptcy herein, and good cause appearing therefor:

It Is Hereby Ordered that, Christine Allen appear and show cause, if any she has, before the undersigned Referee in Bankruptcy at his courtroom in the Federal Building, Temple and Spring

Streets, Los Angeles, California, on the 19th day of June, 1951, at the hour of 2:00 o'clock p.m., why title to the personal property of the above estate should not be quieted in Trustee herein.

It Is Further Ordered that, service of this Order to Show Cause, together with a copy of the Petition upon which the same is issued, may be made by serving the same by mail or personal delivery to the office of respondent's attorney, Harry Roberts, 1120 Banks-Huntley Building, Los Angeles, California; that not less than five days prior to the hearing of this Order to Show Cause shall be sufficient service.

It Is Further Ordered that, if respondent desires to contest the petition upon which this Order to Show Cause is issued, [30] she should file an Answer setting forth the grounds thereof two days prior to the hearing thereon.

Dated this 12th day of June, 1951.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed June 12, 1951, Referee. [31]

[Title of District Court and Cause.]

PETITION FOR RESTRAINING ORDER AND
ORDER TO SHOW CAUSE

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

Comes now your petitioner, Ralph Meyer, and
respectfully represents, as follows:

I.

That he is the duly appointed, qualified and acting
Trustee in Bankruptcy herein.

II.

That heretofore and prior to the commencement
of these proceedings herein, Christine W. Allen
filed an action in the Superior Court of the County
of Inyo, No. 5025, entitled Christine W. Allen vs.
Joseph E. Allen, for damages wherein the bankrupt
herein, by his attorney, answered and filed a cross-
complaint for partition of that certain drugstore
known as Jerry's Drugstore, 206 North Main
Street, Lone Pine, California.

III.

That the issues to be litigated in said action are
before this Honorable Court, who is and has been
hearing said issues. That if the said State action
is prosecuted by plaintiff, Christine [32] Allen, it
would be a duplication of litigation in that this
Court has already assumed jurisdiction; that there
would be unnecessary expense to the estate herein

in defending and going forward with said suit; that no purpose would be served by the continuance of the State law suit.

That title to the assets of said drugstore as between said Christine Allen and the bankrupt herein will be decided by this Honorable Court; that as to the action for damages against the bankrupt by said Christine Allen, if she has a claim against said bankrupt, it must be filed before this Court.

IV.

That the plaintiff herein, Christine Allen, has announced her intention of continuing the prosecution of said law suit; that the same has been set for trial on July 10, 1951.

Wherefore, your petitioner prays that an Order be made and entered herein, restraining said respondent from continuing said law suit.

Dated this 12th day of June, 1951.

/s/ RALPH MEYER,
Trustee in Bankruptcy.

/s/ DOROTHY KENDALL,
Attorney for Trustee.

Duly verified.

[Endorsed]: Filed June 12, 1951, Referee. [33]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the verified petition of Ralph Meyer, Trustee in Bankruptcy herein, and good cause appearing therefor;

It Is Hereby Ordered that, Christine Allen appear and show cause, if any she has, before the undersigned Referee in Bankruptcy at his courtroom in the Federal Building, Temple and Spring Streets, Los Angeles, California, on the 19th day of June, 1951, at the hour of 2:00 o'clock p.m., why she should not be restrained from continuing that certain law suit filed in the Superior Court of Inyo County.

It Is Further Ordered that service of this Order to Show Cause, together with a copy of the Petition upon which the same is issued, may be made by serving the same by mail or personal delivery to the office of respondent's attorney, Harry Roberts, 1120 Banks-Huntley Building, Los Angeles, California; that not less than five days prior to the hearing of this Order to Show Cause shall be sufficient service.

It Is Further Ordered that, if respondent desires to contest the petition upon which this Order to Show Cause is issued, [35] she should file an Answer setting forth the grounds thereof two days prior to the hearing thereon.

Dated this 12th day of June, 1951.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed June 12, 1951, Referee. [36]

[Title of District Court and Cause.]

ANSWER TO TRUSTEE'S PETITION FOR
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE

(Christine Allen)

To Benno M. Brink, Referee in Bankruptcy:

Christine Allen answers the petition of Ralph Meyer, Trustee in Bankruptcy herein, verified June 12, 1951, praying for a restraining order as follows:

I.

Answering the allegations contained in paragraph III thereof Respondent denies generally and specifically each and every allegation therein contained.

Wherefore your Respondent prays that said petition be denied and for her costs herein.

/s/ CHRISTINE ALLEN,
Christine Allen, Respondent.

JESS G. SUTLIFF, and

HARRY R. ROBERTS,

By /s/ HARRY R. ROBERTS,
Attorneys for Respondent.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 15, 1951, Referee. [37]

[Title of District Court and Cause.]

ANSWER TO RECEIVER'S PETITION TO
DETERMINE TITLE TO PERSONAL
PROPERTY AND ORDER TO SHOW
CAUSE

(Christine Allen)

To Benno M. Brink, Referee in Bankruptcy:

Christine Allen answers the petition of Ralph Meyer, Trustee in Bankruptcy herein, verified June 12, 1951, praying for a determination of title to personal property as follows:

I.

Answering the allegations contained in paragraph II thereof Respondent admits that an interlocutory decree of divorce was duly made and entered on or about the 8th day of June, 1949, by the Superior Court of the State of California, in and for the County of Inyo, and that by the terms thereof, it was ordered, adjudged and decreed that your Respondent was entitled to a final decree of divorce from said bankrupt when one year shall have elapsed from the entry of said decree; admits that prior to the making and entry of the aforesaid decree your Respondent and said bankrupt made, executed and delivered a property settlement agreement [40] dated June 8, 1949; admits that by the terms of said property settlement agreement it was agreed by and between your Respondent and said bankrupt that they then owned that certain drug business located in the Town of Lone Pine, County

of Inyo, State of California, as community property, and, further, that in the event an interlocutory decree of divorce was obtained by either of the parties thereto by said parties should thereafter own said business as tenants in common, each owning an undivided one-half interest and further by the terms thereof your Respondent was to receive the first \$15,000.00 from the proceeds of any sale of said drug store and alleges in this connection that by the terms of the aforesaid interlocutory decree of divorce said property settlement agreement was approved and confirmed by said Court and each of the parties thereto was ordered to perform the same; admits that said property settlement agreement was recorded in the County Recorder's office in said County on or about December, 1949; admits that no notice of intention to transfer, hypothecate, sell or assign any interest in said business was filed by either your Respondent or by said bankrupt, prior to the execution of said property settlement agreement or prior to the granting of said interlocutory decree and in this connection alleges that the same was not necessary nor required by law; except as expressly hereinabove admitted, Respondent denies each and every allegation therein contained and the whole thereof.

II.

Answering the allegations contained in paragraph III thereof Respondent admits that she claims that she is the owner of an undivided one-half interest as a tenant in common with said

bankrupt in and to the entire stock in trade, furniture and fixtures and other personal property located in the drug business known as Jerry's Drugstore situated in the Town of Lone Pine, County of Inyo, State of California, together with all of the [41] accounts receivable and good will thereto belonging, and that her ownership thereof is free and clear of any and all creditors' claims; except as expressly herein admitted Respondent denies each and every allegation therein contained.

III.

Answering the allegations contained in paragraph IV thereof, admits that your Respondent has no right, title or interest in and to that certain building known as 206 North Main Street in the Town of Lone Pine, State of California, and alleges that she has never claimed an interest therein and hereby disclaims any and all right, title and interest therein. Further answering the allegations contained in said paragraph alleges that at the time of the execution of the aforesaid property settlement agreement and at the time of the interlocutory decree your Respondent and said bankrupt were the owners as husband and wife as community property of that certain Alcoholic Beverage license issued by the State Board of Equalization of the State of California, together with stock in trade of alcoholic beverages, which license was issued to and standing in the name of said bankrupt; admits that no application has ever been filed with the State Board of Equalization of the State of Cali-

for the transfer of said license from said bankrupt to your Respondent and said bankrupt jointly, and alleges in this connection that no such application was required or necessary; except as expressly herein admitted denies generally and specifically each and every allegation therein contained.

IV.

Answering the allegations contained in paragraph V thereof admits that said bankrupt operated said drug store up to and including February 26, 1951, and alleges in this connection that said bankrupt did, on or about said date, abandon said drug store and ceased thereafter to operate, occupy or possess the same; [42] except as expressly hereinabove admitted, denies generally and specifically each and every allegation therein contained and the whole thereof and alleges that your Respondent is the owner of an undivided one-half interest in and to all of the entire stock in trade, furniture and fixtures and other personal property located in the drug business known as Jerry's Drugstore situated in the Town of Lone Pine, County of Inyo, State of California, together with all of the accounts receivable and good will thereto belonging, free and clear of any and all claims of creditors of said bankrupt.

As a First, Further and Affirmative Defense Your Respondent Alleges:

I.

That she is the owner of an undivided one-half

interest as a tenant in common with said bankrupt of all of the stock in trade, furniture and fixtures and other personal property located in the drug business known as Jerry's Drugstore situated in the Town of Lone Pine, County of Inyo, State of California, together with all of the accounts receivable and good will thereto belonging; that she has claimed and now claims the ownership of said interest openly, notoriously and adversely to said bankrupt and the entire world since the entry of the aforesaid interlocutory decree of divorce; that said bankrupt at the time of the filing of his petition herein was not and had not been since the 26th day of February, 1951, in possession or control of any of the aforesaid assets; that this court has no jurisdiction over the subject matter of said petition, the title of your Respondent to the aforesaid assets or over her rights and claims thereto.

Wherefore your Respondent prays that said petition be denied and for her costs herein.

/s/ CHRISTINE ALLEN,
Respondent.

JESS G. SUTLIFF, and
HARRY R. ROBERTS,

By /s/ HARRY R. ROBERTS,
Attorneys for Respondent.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 15, 1951, Referee. [43]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE: (1) DETERMINATION OF
TITLE TO PERSONALTY; (2) RESTRAIN-
ING STATE COURT LITIGATION

The petition of Ralph Meyer, Trustee in Bankruptcy filed herein on the 24th day of May, 1951, came on regularly for hearing before the Honorable Benno M. Brink, Trustee in Bankruptcy on the 11th day of June, 1951, the Trustee in Bankruptcy appearing through his counsel, Dorothy Kendall; the Respondent Christine W. Allen having answered said petition and having appeared through her counsel, Jess G. Sutliff and Harry R. Roberts and evidence having been introduced and the court made its order dismissing said petition without prejudice to further proceedings to determine the title of Respondent to the property belonging to the bankrupt estate, the petition of Ralph Meyer, Trustee in Bankruptcy filed herein on the 12th day of June, 1951, to determine title to personal property and said Christine W. Allen having filed an answer thereto, said petition came on regularly for hearing on the 19th day of June, 1951, before the Honorable Benno M. Brink, Referee in Bankruptcy, said Trustee appearing through his counsel Dorothy [46] Kendall and the Respondent Christine W. Allen appearing through her counsel, Jess G. Sutliff and Harry R. Roberts and oral and documentary evidence having been introduced and the court now makes its consolidated findings of fact

and conclusions of law upon the aforesaid hearings, as follows:

Findings of Fact

I.

That the above named Bankrupt and Christine W. Allen were for several years prior to the 26th day of June, 1950, husband and wife. That on the 8th day of June, 1949, said parties made, executed and delivered a property settlement agreement, Respondent's Exhibit No. 1 herein, which provided among other things as follows:

"Eleventh: The parties hereto are the owners of the following described community property:

(1) That certain drug store business conducted in the Town of Lone Pine, County of Inyo, State of California, commonly known as Jerry's Mt. Whitney Drugstore * * *."

"Fourteenth: The drug store above referred to shall continue to be owned by the parties hereto as community property, or in the event an interlocutory decree of divorce is obtained by either party then as tenants in common, each owning an undivided one-half interest. The drug store shall remain under the active management and control of the husband."

That said property settlement agreement was recorded in the office of the County Recorder of the County of Inyo on the 12th day of December, 1949.

II.

That the drug store known as Jerry's Drugstore located at 206 North Main Street in the Town of Lone Pine, State of California [47] was for several years prior to and on the 8th day of June, 1948, owned by the above-named Bankrupt and Respondent as community property; that in an action pending between the Bankrupt herein and Respondent in the Superior Court of the State of California in and for the County of Inyo entitled "Christine W. Allen, Plaintiff vs. Joseph E. Allen, Defendant," proceedings No. 4745 of said court, said court duly made and entered on the 9th day of June, 1949, an interlocutory decree of divorce in favor of the plaintiff therein and against the defendant therein, which interlocutory decree was introduced herein as Respondent's Exhibit 2; that by the terms of said interlocutory decree of divorce it was ordered, adjudged and decreed that the plaintiff therein was entitled to a divorce from the defendant therein; that said property settlement agreement was submitted to said court in said proceedings and was by said court approved and each of the parties thereto by the terms of said interlocutory decree of divorce was ordered to perform the same; that thereafter and on the 26th day of June, 1950, said court did duly make and enter a final decree of divorce in said proceedings in favor of the plaintiff therein and against the defendant therein, which final decree of divorce was introduced herein as Respondent's Exhibit 3; that by the terms of said final decree of divorce

it was ordered, adjudged and decreed by said court that the bonds of matrimony then existing between the plaintiff and the defendant therein be, and the same were, dissolved and said court did further by the terms thereof approve said property settlement agreement and ordered each of the parties thereto to perform the same.

III.

That neither the above-named Bankrupt nor Respondent herein filed with the County Clerk of Inyo County or published in a newspaper of general circulation a Notice of Intention to [48] transfer, hypothecate, sell or assign said drugstore business known as Jerry's Drugstore, located at 206 North Main Street, Lone Pine, California, or any assets thereof.

IV.

That prior to the granting of said interlocutory decree of divorce on June 9, 1949, the above-named bankrupt had been in possession of and had operated, managed and controlled said drugstore, and that at the time of the granting of said interlocutory decree of divorce the said bankrupt was in possession of the said drugstore and that the same was then operated, managed and controlled by him. That subsequent to the granting of said interlocutory decree of divorce on June 9, 1949, the above-named bankrupt continued to remain in possession of and to operate, manage and control said drug store until February 26, 1951, when he ceased operations; that although said drugstore

was closed since February 26, 1951, the above-named bankrupt remained in possession of said business; that upon appointment and qualification of Ralph Meyer, Receiver in Bankruptcy herein, the above-named bankrupt turned over to said Receiver all of the assets then in his possession; that said assets included, among other things, all of the assets belonging to, on the premises of, or used in connection with said drugstore.

V.

That at no time since June 9, 1949, did Respondent herein operate, manage, control or have possession of said drugstore.

VI.

That at no time prior to June 9, 1949, did Respondent manage, operate, control or have possession of said drugstore. [49]

VII.

That Respondent disclaims any right or title or interest in and to the frame and stucco building known as 206 North Main Street, Lone Pine, California; that said building is personal property belonging to the above-named bankrupt.

VIII.

That the Off-Sale Alcoholic Beverage License used in connection with the drugstore business was issued by the California State Board of Equalization to the above-named Bankrupt; that Respondent prior to June 9, 1949, was not named as licensee;

that subsequent to June 9, 1949, neither Bankrupt nor Respondent filed any application to transfer said license from the above-named Bankrupt to Bankrupt and Respondent, or any other person.

IX.

That the assets of said drugstore business at the time of the entry of said interlocutory decree of divorce consisted, and now consist, of an off-sale alcoholic beverage license issued by the State Board of Equalization of the State of California to and in the name of the above-named Bankrupt, a stock in trade of alcoholic beverages, a stock in trade of drugs, medicines and sundries, furniture and fixtures, accounts receivable and good will belonging to said business.

X.

That the above-named Bankrupt in operating said drugstore business incurred obligations from time to time, repaying said obligations from the receipts of said drugstore business; that the only creditor of the above-named Bankrupt who is now unpaid and whose obligation arose prior to the making of the aforementioned property settlement agreement between Bankrupt and Respondent is Lester A. Johnson; that [50] said indebtedness was evidenced by a promissory note executed jointly and severally by the above-named Bankrupt and Respondent.

XI.

That prior to the filing of the Voluntary Petition herein, Respondent filed an action in the Su-

perior Court of the State of California, in and for the County of Inyo, entitled Christine W. Allen vs. Joseph E. Allen, No. 5025; that said complaint was entitled "Complaint for Damages"; that the above-named Bankrupt, through his counsel, filed an Answer and Cross-Complaint wherein he prayed for partition of the said drugstore business or for sale thereof and partition of the proceeds; that the subject matter of said Cross-Complaint has been litigated in these proceedings; that Respondent contends the subject of her complaint relates to payments for alimony.

XII.

That prior to the filing by the above-named bankrupt of his Voluntary Petition herein, said bankrupt caused to be filed in this Court a Voluntary Petition entitled "In the Matter of Jerry's Drugstore, a co-partnership composed of Joseph E. Allen and Christine Allen, alleged bankrupt, proceeding No. in Bankruptcy 51832-C"; that the Respondent herein opposed the said petition upon the ground that she was not a partner in the said co-partnership; that upon a hearing in the said matter in this Court the said position of the Respondent was sustained and that it was adjudged that no co-partnership existed between the Bankrupt and the Respondent in the conduct of the drugstore business known as Jerry's Drugstore, and it was ordered that the said Petition be and that the same was dismissed. [51]

Conclusions of Law

I.

The Bankrupt having been in possession and control of that certain drugstore business known as Jerry's Drugstore, 206 North Main Street, Lone Pine, California, on the date of filing his Voluntary Petition in Bankruptcy herein, this court has jurisdiction of the subject matter to determine right, title and interest thereto.

II.

That title to the assets of the said drugstore business should be quieted in the trustee herein; that the interest which the Respondent acquired under the aforesaid property settlement agreement was, subsequent to the entry of the aforesaid interlocutory decree of divorce, an interest as a tenant in common in the net worth of the said business and not an interest in the assets thereof; that the transfer of the said interest to the Respondent is void as against the creditors and the trustee herein, upon the ground that it was not accompanied by an immediate delivery by the Bankrupt to the Respondent of the assets of the said business and was not followed by an actual and continued change of possession of such assets; that the transfer of the said interest, however, would not have been void as against the aforesaid Lester A. Johnson or the trustee herein by reason of the fact that no notice of intention to make such transfer was filed or published.

III.

That this court having taken jurisdiction of the subject matter before it, Respondent should be permanently restrained from proceeding with the action filed in the Superior Court of the State of California, in and for the County of Inyo, for partition; that she should be restrained [52] for a period of thirty days after discharge date of the above-named Bankrupt from proceeding with her action relative to damages or alimony.

Dated this 10th day of July, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 10, 1951, Referee. [53]

[Title of District Court and Cause.]

ORDER

The Court having heretofore made and caused to be filed its written Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed, as follows:

I.

This Court has jurisdiction over the matter, subject of these proceedings.

II.

That that certain drugstore business known as Jerry's Drugstore, 206 North Main Street, Lone Pine, California, shall be and it is hereby decreed to be an asset of the above-named estate.

III.

That title to the said property be and it is hereby quieted in the trustee herein; that Christine Allen has no right or title or interest or claim in or to said drugstore business or in or to the assets of the said business, or any portion thereof.

IV.

That title to the building located at 206 North Main [55] Street, Lone Pine, California, be and it is hereby quieted in the trustee.

V.

That Christine Allen, the Respondent herein, be and she is hereby permanently restrained from proceeding with that certain action entitled Christine W. Allen vs. Joseph E. Allen, No. 5025 in the Superior Court of the State of California, in and for the County of Inyo, insofar as said action relates to or deals with partition or sale of Jerry's Drugstore, 206 North Main Street, Lone Pine, California, or any portion of the assets belonging to the said business.

VI.

That Christine Allen, the Respondent herein, be and she is hereby restrained for a period of thirty

days from and after July 25, 1951, from proceeding with that certain action entitled Christine W. Allen vs. Joseph E. Allen, No. 5025 in the Superior Court of the State of California, in and for the County of Inyo, insofar as said action relates to damages or alimony.

Dated this 10th day of July, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed July 10, 1951, Referee. [56]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER QUIETING TITLE

To Benno M. Brink, Esq., Referee In Bankruptcy:

The petition of Christine Allen respectfully represents:

1. Your petitioner is aggrieved by the order herein of Benno M. Brink, Referee in Bankruptcy, dated the 10th day of July, 1951, a copy of which order is annexed hereto, marked "Exhibit A" and made a part hereof.

2. The Referee erred in respect to said order in that in his conclusion of law numbered II it was held that your petitioner acquired an interest as a tenant in common with the above-named bankrupt in the net worth of the drugstore business known

as Jerry's Drugstore, located in the Town of Lone Pine, State of California, and not in an interest in the assets thereof pursuant to the terms of the interlocutory decree of divorce made and entered the 9th day of June, 1949, in that certain action between your petitioner and the above-named bankrupt in the [57] Superior Court of the State of California in and for the County of Inyo entitled "Christine W. Allen, Plaintiff vs. Joseph E. Allen, Defendant" proceeding No. 4745 of said court, and which decree approved the terms of the property settlement agreement dated the 8th day of June, 1949, by and between your petitioner and the above-named bankrupt. Said conclusion of law is not sustained by said referee's findings numbered I and IX, the terms of said property settlement agreement (Petitioner's Exhibit No. 1), the terms of said interlocutory decree of divorce (Petitioner's Exhibit No. 2), or the terms of the final decree of divorce between said parties in said proceedings (Petitioner's Exhibit No. 3).

3. The referee erred in respect to said order in that in his conclusion of law numbered II it was held that your petitioner did not acquire and does not now own, an undivided one-half interest as a tenant in common with the above-named bankrupt in the assets of the business known as Jerry's Drugstore located in the Town of Lone Pine, State of California.

4. The referee erred in respect to said order in that in his conclusion of law numbered II it was

held that the conversion of your petitioner's community property interest in and to said drugstore business and the assets thereof to an undivided interest as a tenant in common with the above-named bankrupt in and to the said business and the assets thereof was a void transfer as against creditors and the trustee herein on the ground that the same was not accompanied by an immediate delivery of the assets of said business by the above-named bankrupt to your petitioner and was not followed by an actual and continued change of possession of said assets. Said conclusion of law is not sustained by said referee's findings numbered I and IX, the terms of said property settlement agreement (Petitioner's Exhibit No. 1), the terms of said interlocutory [58] decree of divorce (Petitioner's Exhibit No. 2) or the terms of the final decree of divorce between said parties in said proceedings (Petitioner's Exhibit No. 3).

5. The referee erred in respect to said order in that in his conclusion of law numbered II it was held that your petitioner acquired an interest as a tenant in common in the net worth of said drugstore business by the terms of said property settlement agreement and said conclusion of law is not sustained by and is at variance with said referee's finding numbered I, the terms of said property settlement agreement (Respondent's Exhibit No. 1), the terms of said interlocutory decree of divorce (Respondent's Exhibit No. 2) and said final decree of divorce (Respondent's Exhibit No. 3).

6. The referee erred in respect to said order in that it was adjudged therein that your petitioner has no right, title, or interest in or to the said drugstore business or in and to any of the assets thereto belonging.

Wherefore, your Petitioner prays that said order be reviewed by a judge in accordance with the provisions of the Act of Congress relating to Bankruptcy, that said order be reversed, that your petitioner be adjudged to be the owner of an undivided one-half interest as a tenant in common of all the assets belonging to the business known as Jerry's Drugstore located in the Town of Lone Pine, State of California, and that your petitioner have such other and further relief as is just.

Dated July 18, 1951.

/s/ CHRISTINE ALLEN,
Petitioner.

JESS G. SUTLIFF, and
HARRY R. ROBERTS,

By /s/ HARRY R. ROBERTS,
Attorneys for Petitioner. [59]

State of California,
County of Los Angeles—ss.

Christine Allen, being first duly sworn, deposes and says: that she is the Petitioner in the above-entitled action; that she has read the foregoing petition for review of referee's order quieting title, and knows the contents thereof; and that the same

is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

/s/ CHRISTINE ALLEN.

Subscribed and sworn to before me this 18th day of July, 1951.

[Seal] /s/ GRACE B. HUNDLEY,
Notary Public in and for said
County and State.

My commission expires 2/3/52. [60]

EXHIBIT A

In the District Court of the United States, Southern
District of California, Central Division

In Bankruptcy No. 52057-HW

In the Matter of
JOSEPH E. ALLEN,

Bankrupt.

ORDER

The Court having heretofore made and caused to be filed its written Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed, as follows:

I.

This Court has jurisdiction over the matter, subject of these proceedings.

II.

That that certain drugstore business known as Jerry's Drugstore, 206 North Main Street, Lone Pine, California, shall be and it is hereby decreed to be an asset of the above-named estate.

III.

That title to the said property be and it is hereby quieted in the trustee herein; that Christine Allen has no right or title or interest or claim in or to said drugstore business or in or to the assets of the said business, or any portion thereof.

IV.

That title to the building located at 206 North Main [61] Street, Lone Pine, California, be and it is hereby quieted in the Trustee.

V.

That Christine Allen, the Respondent herein, be and she is hereby permanently restrained from proceeding with that certain action entitled Christine W. Allen vs. Joseph E. Allen, No. 5025 in the Superior Court of the State of California, in and for the County of Inyo, insofar as said action relates to or deals with partition or sale of Jerry's Drugstore, 206 North Main Street, Lone Pine, California, or any portion of the assets belonging to the said business.

VI.

That Christine Allen, the Respondent herein, be and she is hereby restrained for a period of thirty

days from and after July 25, 1951, from proceeding with that certain action entitled Christine W. Allen vs. Joseph E. Allen, No. 5025 in the Superior Court of the State of California, in and for the County of Inyo, insofar as said action relates to damages or alimony.

Dated this 10th day of July, 1951.

BENNO M. BRINK,
Referee in Bankruptcy.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 18, 1951, Referee. [62]

In the District Court of the United States, Southern
District of California, Central Division
In Bankruptcy No. 52057-HW

In the Matter of
JOSEPH E. ALLEN,

Bankrupt.

ORDER ON PETITION FOR REVIEW

This matter having come on regularly for hearing in Courtroom No. 5 of the above-entitled Court, before the Honorable Harry C. Westover, Judge Presiding, the Trustee being represented by Dorothy Kendall, his attorney, and Christine Allen being represented by her attorneys, Harry R. Roberts and Jess G. Sutliff, and evidence having been introduced and argument having been had;

It Is Hereby Ordered, Adjudged and Decreed that the order of the Referee filed on July 10, 1951, wherein title to personal property was quieted in the Trustee, be and it is hereby affirmed.

Dated July 31, 1951.

/s/ HARRY C. WESTOVER,
Judge of the District Court.

Judgment Docketed and Entered July 31, 1951.

[Endorsed]: Filed July 31, 1951, U.S.D.C. [97]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Christine Allen does hereby appeal to the United States Court of Appeals, Ninth Circuit, from the order herein of the above-entitled court entered in this cause on the 31st day of July, 1951, which order affirmed the order herein of Benno M. Brink, Referee in Bankruptcy dated the 10th day of July, 1951.

Dated August 28, 1951.

HARRY R. ROBERTS, and

JESS G. SUTLIFF,

By /s/ HARRY R. ROBERTS,

Attorneys for Christine Allen.

[Endorsed]: Filed August 29, 1951, U.S.D.C.

RESPONDENT'S EXHIBIT No. 1

Exhibit "A"

Property Settlement and Child Custody Agreement

This Agreement, made and entered into this 8th day of June, 1949, by and between Joseph E. Allen, of Lone Pine, Inyo County, California, the party of the first part, hereinafter referred to as the husband, and Christine W. Allen, of Lone Pine, Inyo County, California, the party of the second part, hereinafter referred to as the wife,

Witnesseth:

Whereas, the parties hereto were lawfully married on or about the 31st day of December, 1933, and ever since said date have been and now are husband and wife; and

Whereas, the parties to this agreement have two minor children, Michael Gay Allen, [64] born November 8, 1940, and Patrick Francis Allen, born October 16, 1941; and

Whereas, in consequence of disputes and unhappy differences the parties hereto have separated and are now living separate and apart and since their separation have agreed to live separate and apart for the remainder of their natural lives; and

Whereas, it is mutually desired by the parties that a full and final adjustment of all their respective property rights, interest and claims he had, settled and determined by this agreement, both with respect to community interests and/or separate interests and/or the rights of inheritance from each to the other;

Respondent's Exhibit No. 1—(Continued)

Now, Therefore, in consideration of the mutual promises, covenants and agreements hereinafter set forth, made by each to the other, it is covenanted and agreed and promised by each party hereto to and with the other party as follows:

First: That, except as hereinafter provided, each party hereto is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and that each of said parties hereby releases the other from any and all debts, liabilities and obligations of every kind and character incurred by the other from and after this date, and from any and all claims and demands, including all claims of either party upon the other for support and maintenance as wife or husband or otherwise, it being understood that this instrument is intended to settle the rights of the parties hereto in all respects, except as hereinafter provided.

Second: That any and all property acquired by either of the parties hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same, and each of said parties hereby respectively grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same.

Third: That except as hereinafter provided, each of the said parties shall have an immediate right to dispose of or bequeath by will his or her respective interests in and to any and all property

Respondent's Exhibit No. 1—(Continued)

belonging to him or her from and after the date hereof, and that said right shall extend to all of the aforesaid future acquisitions of property as well as to all property set over to either of the parties hereto under this agreement.

Fourth: That except as hereinafter provided, each of said parties hereto hereby waives any and all right to the estate of the other left at his or her death, and forever quitclaims any and all right to share in the same of the other, by the laws of succession, and said parties hereby release one to the other all right to be administrator or administratrix or executor or executrix of the estate of the other, and hereby release and waive all right to inherit under any will of the other, and each of the said parties hereby waives any and all right of homestead in the real property of the other, and said parties hereby waive any and all right to the estate or any interest in the estate of the other for family allowance by way of inheritance, and from the date of this agreement to the end of the world said waiver of each party in the estate of the other party shall be in effect, and they shall have all the rights of single persons and maintain the same relation of such toward each other.

Fifth: The wife does and shall accept the provisions herein made for her in full satisfaction of her right to the community property of the respective parties hereto, and in full satisfaction of her right to support and maintenance. The wife hereby covenants and agrees that she shall not and will not

Respondent's Exhibit No. 1—(Continued)

at any time hereafter contract any debts, charges or liabilities whatsoever for which the husband or his property or his estate shall or may become or be answerable, and that she will keep the husband free and harmless of and from any and all debts or liabilities which may hereafter be incurred by her. [65]

Sixth: That each of the respective parties shall be entitled to receive from the other proper conveyances, assignments, or other transfers to the end and purpose that the real property and personal property of the parties hereto may be made to appear of record ownership as hereinafter provided.

Seventh: Neither of the parties shall molest or annoy the other, or compel or endeavor to compel the other to cohabit or to dwell with him or her, as the case may be, by legal or other proceedings, for restoration of conjugal rights or otherwise. Neither party hereto shall, against the wish and desire of the other, call upon or visit the other, but this agreement shall not preclude any right or visitation pursuant to mutual agreement.

Eighth: The parties shall at any time or times hereafter, make, execute and deliver any and all further or other instruments, papers or things as the other of the said parties shall require for the purpose of giving full effect to these presents and to the covenants, provisions and agreements hereof.

Ninth: It is mutually agreed that this property settlement agreement may by either party be submitted to the court in which any action between the

Respondent's Exhibit No. 1—(Continued)

parties to this agreement is now pending, or may hereafter be pending, and that it shall be conclusive as to the rights of such parties, and may be incorporated in any judgment or decree rendered by the court having jurisdiction of the pending proceedings.

Tenth: The wife shall have the care, custody and control of said minor children, subject to the right of visitation by the husband at any and all reasonable times, which right of visitation shall include the right to have the children with him in his home for reasonable periods of time. The husband further promises and agrees that he will pay to the wife the sum of One Hundred and Twenty-five Dollars (\$125.00) per month as and for the support, maintenance and education of said minor children, until the youngest of said children reaches the age of twenty-one years, or becomes self-supporting, or until this agreement is modified by further contract of the parties or, for cause shown, by order of a court of competent jurisdiction.

It is further covenanted and agreed by the wife that she will pay, from the above funds or her personal funds, the premiums to become due on policies numbers M7976615 of the Prudential Insurance Company of America on the life of Michael C. Allen and on policy number M7978616 of the same company on the life of Patrick F. Allen.

Eleventh: The parties hereto are the owners of the following described community property:

Respondent's Exhibit No. 1—(Continued)

1. That certain drugstore business, conducted in the Town of Lone Pine, County of Inyo, State of California, commonly known as Jerry's Mt. Whitney Drugstore;

2. Household furniture, furnishings and equipment now in the home of the parties hereto in the Town of Lone Pine, County of Inyo, State of California;

3. Two unimproved lots in the Town of Lone Pine, County of Inyo, State of California;

4. One automobile;

5. Several United States Government savings bonds, Series E, having a maturity value of approximately \$300.00;

6. Policy No. 9138106 of the Prudential Insurance Company of America on the life of Christine Allen, in the principal amount of \$1,000.00, in which Joseph E. Allen is named beneficiary;

7. Policy No. 9138107 of the Prudential Insurance Company of America on the life of Joseph Evan Allen, in the principal amount of \$5,000.00, wherein Christine Allen is named beneficiary;

8. Policies Nos. 89641960, 89641961, 83894764, 83894806, 97073792, [66] 82000389, and 82000454, of the Prudential Insurance Company of America, collectively insuring the life of Joseph E. Allen in the principal amount of \$....., and payable to the executor or administrator of the

Respondent's Exhibit No. 1—(Continued)

insured or other persons designated in general terms by the provisions of said policies.

Twelfth: The wife shall receive, as her sole and separate property, and the husband does hereby transfer, set over and assign and convey to the wife as her sole and separate property, the United States savings bonds, the household furniture, furnishings and equipment, and Policy No. 9138106 of the Prudential Insurance Company of America, wherein the wife is named as the insured.

Thirteenth: The husband shall receive, as his sole and separate property, and the wife does hereby transfer, set over, assign and convey to the husband as his sole and separate property, the lots of land situate in the Town of Lone Pine, County of Inyo, State of California, the automobile, and the insurance policies on the life of the husband; provided, however, that the husband shall not be authorized to change the beneficiaries designated in said insurance policies unless and until the wife has been paid the sum of \$15,000.00 and the trust fund of \$10,000.00 for said children established as set forth in paragraph fourteenth hereof.

Fourteenth: The drugstore above referred to shall continue to be owned by the parties hereto as community property, or in the event an interlocutory decree of divorce is obtained by either party then as tenants in common, each owning an undivided one-half interest. The drugstore shall remain under the active management and control of the husband. In the event that said drugstore

Respondent's Exhibit No. 1—(Continued)
is sold, there shall be paid to the wife the sum of fifteen thousand dollars (\$15,000.00) from the proceeds of such sale, in full satisfaction of her right, title and interest in and to the drugstore, and upon such sale the husband shall establish a trust fund in the amount of ten thousand dollars (\$10,000.00) for the use of said minor children at any time their needs may require it, but primarily for the purpose of obtaining a higher education for them. In the event such trust fund is established, Dr. George Wilson, of Pasadena, California, shall be named as sole trustee. In the event of the death, inability or incapacity of the said Dr. Wilson to act, then the parties to this agreement or the survivor of them shall substitute as such trustee. It is further understood and agreed that the husband may at any time acquire all the right, title and interest of the wife in and to said drugstore by the payment to her of the sum of \$15,000.00 and the establishment of said trust fund above referred to.

Unless said business is sooner sold, the husband shall purchase the interest of the wife in said business, according to the provisions of Paragraph Fourteenth of this agreement, on or before the 15th day of December, 1951.

Said purchase price may be paid by the payments of said amounts in a lump sum, or at the option of the husband by an initial payment of five thousand dollars (\$5,000.00) and the balance in monthly installments of three hundred dollars (\$300.00) or more, including interest at five per cent per annum

Respondent's Exhibit No. 1—(Continued)

on the amounts from time to time remaining unpaid. Upon the payment of the initial deposit, the husband shall receive from the wife a bill of sale to said business, and shall execute and deliver to her a chattel mortgage on all of the trade fixtures and equipment of said business, a first lien, as security for the payment of the balance due to the wife and for the establishment of the trust fund. Such chattel mortgage shall contain a provision to the effect that at no time until its obligation has been discharged will the husband permit the stock in trade to fall below the value of \$18,000.00. As soon as said sum of \$15,000.00 shall have been paid to the wife in the foregoing manner, [67] the husband shall commence the establishment of said trust fund by the payment of \$300.00 or more each month for such purpose, until the entire principal sum of \$10,000.00 shall have been paid.

Pending the sale of such business or the acquisition of the wife's interest, by the husband, either by payment of the full purchase price or election to purchase on the installment basis as hereinabove provided for, the husband shall pay to the wife the sum of two hundred twenty-five dollars (\$225.00) per month, and all other proceeds derived from the operation of said business shall become the sole and separate property of the husband, as well as the damages which the husband may recover from Ben B. Baker and Rupert Renfrow or either of them in the action now pending against them. It is further understood and agreed that in the event the net

Respondent's Exhibit No. 1—(Continued)

profits of said business for four successive months shall ever fall below an average of \$700.00 per month, the amount of payments required under the terms hereof may be reduced by mutual agreement of the parties; and if no agreement can be reached, the husband shall be authorized to petition a court of competent jurisdiction for such purpose, which court shall have the authority to modify the Provisions hereof as to monthly payments in such manner as to such court may appear meet and proper under the circumstances. The monthly payments required by the terms hereof shall in no way reduce the principal amount of \$15,000.00 payable to the wife nor the \$10,000.00 trust fund to be established for the children. Upon the payment of said sum of \$15,000.00 to the wife and the establishment of said trust fund, all obligation of the husband to pay to the wife and sum or sums whatsoever, except for the support and maintenance of said children, shall cease and determine.

Fifteenth: Each of the parties hereto does expressly promise and agree that all of the property above referred to shall by each of said parties be by will devised and bequeathed to the other, or to said minor children, and that the insurance policies on the life of each party shall continue to name the other, or said minor children, as the beneficiary, until such time as either party to this agreement may lawfully remarry, in which event each of the parties hereto shall be released from the obligation of this paragraph. Provided further, that the termi-

Respondent's Exhibit No. 1—(Continued)

nation of the obligations of this paragraph shall not authorize the husband to change the beneficiaries of the policies of insurance on his life prior to the time when there shall have been paid to the wife the sums of money, and his establishment of the trust fund referred to, under the provisions of paragraph fourteenth hereof.

Sixteenth: It is mutually understood and agreed that one acre of land in the County of Los Angeles, State of California, standing in the name of the husband, was acquired prior to the marriage of the parties hereto and is his separate property.

Seventeenth: (a) It is stipulated that the wife has retained Glenn E. Tinder, and attorney at law duly licensed to practice in the State of California, to advise her in connection with this agreement; and the husband hereby agrees to pay to said attorney, as additional support for the wife, the sum of \$25.00 to compensate him for his services in that connection.

(b) If either party shall hereafter institute suit for divorce against the other, in any court of competent jurisdiction, the husband hereby agrees to pay to the wife, or to her nominee, as additional support of the wife, the sum of \$159.00, which shall be in full satisfaction of any legal obligation of the husband to reimburse her for attorney fees and costs in connection with such action.

(c) The wife hereby agrees that the payments provided for in this paragraph shall be and are in full satisfaction of any and all obligations of the

Respondent's Exhibit No. 1—(Continued)
husband for attorney fees or costs in connection with this agreement of such divorce action; provided, however, that if it shall hereafter be necessary for the wife to employ counsel to enforce this agreement [68] or to take any other action not herein referred to, the wife reserves the right to apply to any court of competent jurisdiction for such attorney fees and costs as she may be then entitled to, and the husband agrees to pay reasonable fees and costs in such event.

Eighteenth: Each of the parties hereto does hereby solemnly and specifically aver that he or she has read this agreement and understands the same; that each has had independent legal advice by counsel of his or her own selection; that this agreement has been entered into without undue influence or fraud or coercion or misrepresentation, or for any cause other than herein specified, and that each party executes this agreement freely and voluntarily.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

/s/ JOSEPH E. ALLEN,

Joseph E. Allen, the Husband.

/s/ CHRISTINE W. ALLEN,

Christine W. Allen, the Wife.

Respondent's Exhibit No. 1—(Continued)

Approved:

/s/ HUGH E. BRIERLY,
Attorney for the Husband.

/s/ GLENN E. TINDER,
Attorney for the Wife.

State of California,
County of Inyo—ss.

On this 8th day of June, 1949, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Joseph E. Allen and Christine W. Allen, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] /s/ HUGH E. BRIERLY,
Notary Public in and for the County of Inyo, State
of California.

Filed for record at the request of Jerry Allen 2
minutes past 10 o'clock a.m., Dec. 12, 1949.

#57 Fee \$3.90.

RICHARD F. OYLER,
Recorder.

Respondent's Exhibit No. 1—(Continued)

County Recorder's Office

State of California,

County of Inyo—ss.

I, Richard F. Oyler, County Recorder of the County of Inyo, State of California, do hereby certify the foregoing to be a full, true and correct copy of Property Settlement Agreement, recorded December 12, 1949, as the same appears on record in my office in Volume 81 of Official Records at page 215, Records of Inyo County.

Witness my hand and seal of said County Recorder this 14th day of June, 1951.

RICHARD F. OYLER,
County Recorder.

By /s/ DONALD L. BELL,
Deputy.

[Endorsed]: Filed June 19, 1951.

RESPONDENT'S EXHIBIT No. 2

In the Superior Court of the State of California
in and for the County of Inyo

CHRISTINE W. ALLEN,

Plaintiff,

vs.

JOSEPH E. ALLEN,

Defendant.

INTERLOCUTORY DECREE OF DIVORCE

It appearing to the court that defendant, Joseph E. Allen, was served with the summons issued in this action and that said defendant has filed herein his appearance and waiver, reference to the same being hereby made, and the default of said defendant having been duly and regularly entered, and this cause coming on regularly to be heard this 9th day of June, 1949, upon plaintiff's complaint herein and upon the proofs taken herein from which it appears and the court finds that all the allegations of the complaint are true and that they are sustained by the testimony of plaintiff, which was corroborated by other testimony, and all and singular the law and the premises being by the court here understood and fully considered:

Wherefore, it is ordered, adjudged, and decreed, and this court does hereby order, adjudge, and decree as and for an interlocutory judgment herein, that the plaintiff ought to be granted a divorce from the defendant and that she is entitled to an

interlocutory judgment of this court adjudging that she has established grounds for the dissolution of the bonds of matrimony heretofore and now existing between said plaintiff and defendant; and pursuant to the statute in such case made and provided, such interlocutory judgment is hereby made on the ground of extreme cruelty.

It is further ordered, adjudged and decreed that the property settlement and child custody agreement, an executed copy of which was filed with the Court on this date, be and the same is hereby approved in all respects, and each party thereto is hereby ordered and directed to meet and observe the obligations therein contained incumbent upon them respectively.

Done in open Court this 9th day of June, 1949.

/s/ WM. D. DEHY,

Judge of the Superior Court.

Certified true copy.

[Endorsed]: Filed June 9, 1949, County Clerk.

[Endorsed]: Filed June 19, 1951, Referee. [70]

RESPONDENT'S EXHIBIT No. 3

In the Superior Court of the State of California
in and for the County of Inyo

CHRISTINE W. ALLEN,

Plaintiff,

vs.

JOSEPH E. ALLEN,

Defendant.

FINAL DECREE OF DIVORCE

It appearing to the court and the court finding that an interlocutory judgment adjudging and declaring that the Plaintiff was entitled to a divorce from the Defendant was entered in the above-entitled action on the 9th day of June, 1949, and recorded in Judgment Book 8 of said Court at page 186; that one year has expired since the entry of said interlocutory judgment, and said action has not been dismissed; that no appeal has been taken from said interlocutory judgment and no motion for a new trial has been made, and that there is no reason why a final judgment granting divorce should not be made and entered herein;

And all and singular the law and the facts being by the court understood and fully considered;

Wherefore, it is here Ordered, Adjudged, and Decreed and this court does hereby order, adjudge, and decree that the marriage between said plaintiff, Christine W. Allen, and said defendant, Joseph E. Allen, be dissolved, and the same is hereby dissolved upon the ground of extreme cruelty, and

the said parties are, and each of them is, freed and absolutely released from the bonds of matrimony, and all the obligations thereof, and restored to the status of single persons.

It is further ordered, adjudged and decreed that the property settlement and child custody agreement, an executed copy of which was filed with the Court and submitted to the Court for its approval, be and the same is hereby approved in all respects, and each party thereto is hereby ordered and directed to meet and observe the obligations therein contained incumbent upon them respectively.

Done in open Court this 23rd day of June, 1950.

/s/ ERNEST D. WAGNER,

Judge of the Superior Court.

I hereby certify that the decree, of which the within is a true copy, was entered in Judgment Book 8 at page 264 of the above-entitled court on the 26th day of June, 1950.

[Seal] FAY LAWRENCE,
Clerk.

By /s/ TILLIE STEELE,
Deputy Clerk.

[Superior Court Seal.]

[Endorsed]: Filed June 26, 1950, County Clerk.

[Endorsed]: Filed June 19, 1951, Referee. [71]

RESPONDENT'S EXHIBIT No. 4

In the Superior Court of the State of California
in and for the County of Inyo
No. 5025

CHRISTINE W. ALLEN,

Plaintiff,

vs.

JOSEPH E. ALLEN,

Defendant.

COMPLAINT FOR DAMAGES

Plaintiff complains of defendants, and alleges:

I.

That on June 8th, 1949, plaintiff and defendant being then married to each other, entered into a property settlement agreement which provided, among other things, the following:

“Tenth: The wife shall have the care, custody and control of said minor children, subject to the right of visitation by the husband at any and all reasonable times, which right of visitation shall include the right to have the children with him in his home for reasonable periods of time. The husband further promises and agrees that he will pay to the wife the sum of One Hundred and Twenty-five Dollars (\$125.00) per month as and for the support, maintenance and education of said minor children, until the youngest of said children reaches the age of twenty-one years, or becomes self-supporting, or [72] until this agreement is

Respondent's Exhibit No. 4—(Continued)
modified by further contract of the parties or, for cause shown, by order of a court of competent jurisdiction.

“It is further covenanted and agreed by the wife that she will pay, from the above funds or her personal funds, the premiums to become due on policies number M7978615 of the Prudential Insurance Company of America on the life of Michael G. Allen and on policy number M7978616 of the same company on the life of Patrick F. Allen.”

“Fourteenth: * * * Pending the sale of such business or the acquisition of the wife's interest, by the husband, either by payment of the full purchase price or election to purchase on the installment basis as hereinabove provided for, the husband shall pay to the wife the sum of two hundred twenty-five dollars (\$225.00) per month, and all other proceeds derived from the operation of said business shall become the sole and separate property of the husband, as well as the damages which the husband may recover from Ben B. Baker and Rupert Renfrow or either of them in the action now pending against them. It is further understood and agreed that in the event the net profits of said business for four successive months shall ever fall below an average of \$700.00 per month, the amount of payments required under the terms hereof may be reduced by mutual agreement of the parties; and if no agreement can be reached, the husband shall be authorized to petition a court of competent jurisdiction for such purpose, which

Respondent's Exhibit No. 4—(Continued)

court shall have the authority to modify the provisions hereof as to monthly payments in such manner as to such court may appear meet and proper under the circumstances. The monthly payments required by the terms hereof shall in no way reduce the principal amount of \$15,000.00 payable to the wife nor the \$10,000.00 trust fund to be established for the children. Upon the payment of said sum of \$15,000.00 to the wife and the establishment of said trust fund, all obligation of the husband to pay to the wife any sum or sums whatsoever, except for the support and maintenance of said children shall cease and determine." [73]

II.

That under the terms of said agreement defendant became indebted to the plaintiff in the sum of Six Thousand Six Hundred Fifty and no/100 Dollars (\$6,650.00), as follows:

a. For and on account of support of the minor children at the rate of \$125.00 per month from June 9th, 1949, to January 9th, 1951, the sum of \$2375.00; and,

b. For and on account of the monthly payments owing plaintiff at the rate of \$225.00 per month from June 9th, 1949, to January 9th, 1951, the sum of \$4275.00.

III.

That defendant has paid to plaintiff an account of said indebtedness the sum of \$3600.00 as follows:

Respondent's Exhibit No. 4—(Continued)

Date Due	Amount Received	Date Received
June 9th to July 9th	\$ 350.00	6/ 7/49
July 9th to Aug. 9th	350.00	7/28/49
Aug. 9th to Sept. 9th	175.00	9/ 3/49
Aug. 9th to Sept. 9th	175.00	9/12/49
Sept. 9th to Oct. 9th	150.00	9/23/49
Sept. 9th to Oct. 9th	200.00	10/31/49
Oct. 9th to Nov. 9th	250.00	12/ 3/49
Oct. 9th to Nov. 9th	100.00	12/24/49
Oct. 9th to Nov. 9th	150.00	12/24/49
Nov. 9th to Dec. 9th	100.00	2/ 4/50
Nov. 9th to Dec. 9th	100.00	3/ 2/50
Nov. 9th to Dec. 9th	50.00	3/ 2/50
Dec. 9th to Jan. 9th	150.00	4/ 1/50
Dec. 9th to Jan. 9th	150.00	4/29/50
Dec. 9th to Jan. 9th	300.00	6/ 1/50
Jan. 9th to Feb. 9th	50.00	7/ 5/50
Jan. 9th to Feb. 9th	100.00	7/ 5/50
Feb. 9th to Mar. 9th	150.00	8/ 4/50
Feb. 9th to Mar. 9th	100.00	9/ 3/50
Mar. 9th to Apr. 9th	50.00	9/ 3/50
Mar. 9th to Apr. 9th	150.00	10/11/50
Mar. 9th to Apr. 9th	125.00	12/ 2/50
Apr. 9th to May 9th	125.00	1/.. /51
Total Received	<hr/> \$3600.00	

Respondent's Exhibit No. 4—(Continued)

Recapitulation

Amount due June 9th, 1949, to January 9th, 1951, at \$350.00 per month.....	\$6650.00
Amount received	3600.00
	<hr/>
Amount unpaid Jan. 9th, 1951....	3050.00

IV.

That as of January 9th, 1951, there became due, owing and unpaid from defendant to plaintiff the sum of Three Thousand Fifty 00/100 Dollars (\$3,050.00), under the terms of said agreement.

V.

That although plaintiff has demanded of defendant payment of said sum, defendant has failed, refused and neglected to pay the same or any part thereof and the whole thereof is now due, owing and unpaid.

VI.

That the said property settlement agreement provides also, among other things, as follows:

“Seventeenth:

“(c) The wife hereby agrees that the payments provided for in this paragraph shall be and are in full satisfaction of any and all obligations of the husband for attorney fees or costs in connection with this agreement or such divorce action; provided, however, that if it shall hereafter be necessary for the wife to em-

Respondent's Exhibit No. 4—(Continued)
ploy counsel to enforce this agreement or to take any other action not herein referred to, the wife reserves the right to apply to any court of competent jurisdiction for such attorney fees and costs as she may be then entitled to, and the husband agrees to pay reasonable fees and costs in such event."

VII.

That by reason of the failure by defendant to make the payments as provided by said agreement it has become necessary for plaintiff to employ counsel to enforce the same and by reason thereof plaintiff has incurred an obligation to pay Jess G. Sutliff attorney's fees for services rendered herein and plaintiff has incurred costs of suit in the prosecution of this action.

VIII.

Plaintiff alleges that the sum of \$350.00 is a reasonable sum [75] to be allowed for attorney's fees herein and the sum of \$100.00 is a reasonable sum to be allowed for costs of suit.

Wherefore, plaintiff prays judgment as follows:

1. The sum of \$3,050.00 together with interest thereon at the rate of seven per cent per annum from March 9th, 1950, until paid;
2. The sum of \$350.00 for attorney's fees;
3. The sum of \$100.00 for costs of suit; and,

Respondent's Exhibit No. 4—(Continued)

4. For such other and further relief as to this Court may seem just.

/s/ CHRISTINE W. ALLEN,
Plaintiff.

.....
Jess G. Sutliff,
Attorney for Plaintiff.

State of California,
County of Los Angeles—ss.

Christine W. Allen, being first duly sworn, deposes and says: that she is the plaintiff in the above-entitled action; that she has read the foregoing complaint and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

/s/ CHRISTINE W. ALLEN,

Subscribed and sworn to before me this 30th day of January, 1951.

/s/ ARTHUR S. HIGGINS,
Notary Public in and for said
County and State.

My Commission Expires Mar. 10, 1952.

Respondent's Exhibit No. 4—(Continued)

In the Superior Court of the State of California
in and for the County of Inyo

No. 5025

CHRISTINE W. ALLEN,

Plaintiff and Cross-Defendant,

vs.

JOSEPH E. ALLEN,

Defendant and Cross-Complainant.

ANSWER AND CROSS-COMPLAINT

Comes now the defendant, Joseph E. Allen, and answers the alleged cause of action contained in plaintiff's complaint on file herein as follows:

I.

Answering paragraph I in said complaint contained defendant admits that on June 8, 1949, plaintiff and defendant being then married to each other, entered into a property settlement agreement containing among others the provisions set forth in said paragraph I of plaintiff's complaint.

II.

The defendant denies each and every allegation in paragraph II in said complaint contained and specifically denies that he, the said defendant, became indebted to the plaintiff in the sum of Six thousand six hundred fifty dollars (\$6,650.00), or

Respondent's Exhibit No. 4—(Continued)

any sum or sums whatsoever exceeding the sum of Three thousand seven hundred dollars [77] (\$3,700.00).

III.

Further answering the allegations in paragraph II in said complaint contained, defendant admits that he became indebted to plaintiff on account of support of minor children at the rate of One hundred twenty-five dollars (\$125.00) per month from June 9, 1949, to January 9, 1951, in the sum of Two thousand three hundred seventy-five dollars (\$2,375.00), but alleges that said sum of Two thousand three hundred seventy-five dollars (\$2,375.00) was fully paid prior to the institution of this action. Defendant specifically denies that he became indebted to plaintiff in the sum of Four thousand two hundred seventy-five dollars (\$4,275.00), or in any sum or sums whatsoever, for and on account of monthly payments in said complaint referred to.

IV.

Answering paragraph III defendant alleges that during the period or periods described in said paragraph III in said complaint contained he, the said defendant, paid to plaintiff the sum of Three thousand seven hundred dollars (\$3,700.00), and not the sum of Three thousand six hundred dollars (\$3,600.00) as in said complaint alleged.

V.

Further answering the allegations in paragraph III in said complaint contained, defendant denies

Respondent's Exhibit No. 4—(Continued)
that there was unpaid to plaintiff on the 9th day of January, 1951, or on any other date or dates whatsoever, the sum of Three thousand fifty dollars (\$3,050.00) or any other sum or sums whatsoever.

VI.

Answering paragraph IV in plaintiff's complaint contained, defendant denies generally and specifically that as of January 9, 1951, or as of any other date whatsoever, there became due, owing and unpaid from him, the said defendant, to plaintiff, the sum of Three thousand fifty dollars (\$3,050.00), under the terms of the agreement set forth in plaintiff's complaint or under any other terms, agreement or act whatsoever. [78]

VII.

Answering paragraph V in plaintiff's complaint contained, defendant denies generally and specifically that the sum of Three thousand fifty dollars (\$3,050.00), or any other sum or sums whatsoever, is now due, owing and unpaid by him, the said defendant, to plaintiff.

VIII.

Answering paragraph VI in plaintiff's complaint contained defendant admits that the property settlement agreement therein referred to contains, among other things, the paragraph recited in plaintiff's complaint.

IX.

Answering paragraph VII in plaintiff's complaint contained, defendant denies generally and

Respondent's Exhibit No. 4—(Continued)

specifically that he failed or neglected to make any of the payments as provided by said agreement, and denies that it became necessary for plaintiff to employ counsel to enforce the property settlement agreement in said complaint referred to, and alleges that if said plaintiff has incurred an obligation to pay Jess G. Sutliff attorney's fees for services rendered herein that said obligation was wholly unnecessary and is not the obligation of this defendant.

X.

Answering paragraph VIII in said complaint contained, defendant denies that the sum of Three hundred fifty dollars (\$350.00), or any other sum or sums whatsoever, is a reasonable sum to be allowed for attorney's fees herein, and further denies that the sum of One hundred dollars (\$100.00), or any other sum or sums whatsoever, is a reasonable sum to be allowed for costs of suit.

For a Further and Separate Defense to the Alleged Cause of Action Contained in Plaintiff's Complaint on File Herein, Defendant Alleges:

I.

That by the terms of paragraph fourteen of the property settlement agreement referred to in plaintiff's complaint herein, which said paragraph is recited at lines eight (8) to thirty (30), inclusive, on page two (2) of plaintiff's complaint, defendant agreed to pay to plaintiff the sum of [79] Two

Respondent's Exhibit No. 4—(Continued)
hundred twenty-five dollars (\$225.00) per month from the proceeds derived from the operation of a certain drugstore business in the Town of Lone Pine, County of Inyo, State of California; that from and after the execution of said agreement proceeds were not derived from the operation of said business in an amount sufficient to pay said sum of Two hundred twenty-five dollars (\$225.00) per month; that by the terms of said agreement said payment of Two hundred twenty-five dollars (\$225.00) per month was restricted to payment from a specific fund, to wit, the proceeds from said business, and that said fund has not at any time during the period or periods stated in plaintiff's complaint herein existed; that by reason thereof defendant has not become indebted to plaintiff for said sums of Two hundred twenty-five dollars (\$225.00) per month.

And for a Further and Separate Defense to Said Alleged Cause of Action Contained in Plaintiff's Complaint on File Herein, Defendant Alleges:

I.

That by the terms and provisions of paragraph fourteen of the property settlement agreement between plaintiff and defendant referred to and recited at lines eight (8) to thirty (30), inclusive, to plaintiff's complaint, it was understood and agreed by and between plaintiff and defendant that in the event the net profits of that certain drug-

Respondent's Exhibit No. 4—(Continued)

store business in the Town of Lone Pine, County of Inyo, State of California, for four (4) successive months, should ever fall below an average of Seven hundred dollars (\$700.00) per month, the amount of payments required under the terms of said agreement might be reduced by mutual agreement of the parties; that at no time and for no period since the execution of said agreement have the net profits of said business for four (4) successive months ever reached an average of Seven hundred dollars (\$700.00) per month, but have for each four (4) successive months' period since the execution of said agreement fallen below said average of Seven hundred dollars (\$700.00) per month; that by said agreement it was the intention of the parties that in such event or events no obligation of monthly payments to plaintiff thereunder should secure, and that defendant did not [80] become indebted to plaintiff for said payments as in plaintiff's complaint alleged. [81]

For a Cross-Complaint Against Plaintiff and Cross-Defendant, Defendant and Cross-Complainant Alleges:

I.

That on the 8th day of June, 1949, defendant and cross-complainant made and entered into a written agreement with plaintiff and cross-defendant, a copy of which is attached hereto and marked "Exhibit A."

Respondent's Exhibit No. 4—(Continued)

II.

That by the terms of said agreement it was provided in paragraph fourteen thereof at page seven (7) that pending the sale of the business therein referred to the defendant and cross-complainant should pay to the wife the sum of Two hundred twenty-five dollars (\$225.00) per month, provided, however, that in the event the net profits of the business in said agreement referred to for four (4) successive months should ever fall below an average of Seven hundred dollars (\$700.00) per month, the amount of payments required under the terms of said agreement might be reduced by mutual agreement of the parties, or, if no agreement could be reached, the defendant and cross-complainant should be authorized to petition a Court of competent jurisdiction for such purpose, which said Court should have the authority to modify the provisions herein referred to as to monthly payments in such manner as to such Court might appear meet and proper under the circumstances.

III.

That subsequent to the agreement aforesaid defendant and cross-complainant continued to and did operate the business in said agreement referred to from and after the 8th day of June, 1949, and that during no period of four (4) successive months did the net profits of said business average Seven hundred dollars (\$700.00) per month; that defend-

Respondent's Exhibit No. 4—(Continued)

ant and cross-complainant has attempted to reduce the said payments by mutual agreement with plaintiff and cross-defendant but that no agreement can be reached, and that the defendant and cross-complainant is entitled to a decree and judgment of this Court modifying the terms of the agreement herein referred to and the monthly payments aforesaid in such manner as to this Court may appear meet and proper under the circumstances. [82]

IV.

That defendant and cross-complainant has no adequate remedy at law under the premises.

As a Second Separate and Distinct Cause of Action
Defendant and Cross-Complainant Alleges:

I.

That the defendant and cross-complainant and the plaintiff and cross-defendant are co-owners, as tenants in common, of all and singular the following personal property, to wit:

That certain drugstore business conducted in the Town of Lone Pine, County of Inyo, State of California, commonly known and referred to as "Jerry's Mt. Whitney Drugstore," together with all and singular the fixtures, equipment, supplies, and stock-in-trade of said business, including the goodwill thereof and all accounts receivable thereof.

That defendant and cross-complainant has an undivided one-half interest in said property and busi-

Respondent's Exhibit No. 4—(Continued)
ness and that plaintiff and cross-defendant has an undivided one-half interest therein.

II.

That the defendant and cross-complainant herein desires a partition of said property above described; that the parties hereto have been unable to agree as to the manner in which said property shall be divided.

III.

That no person other than the defendant and cross-complainant and the said plaintiff and cross-defendant is interested in said property, or any part thereof, as owner or otherwise.

Wherefore, defendant and cross-complainant prays that plaintiff and cross-defendant take nothing by her complaint herein, and that he have judgment on his cross-complaint as follows:

1. That the property settlement agreement herein referred to be modified, and the monthly payments of Two hundred twenty-five dollars (\$225.00) per month provided for in said agreement be reduced in an amount and manner which shall by this Court be deemed meet and proper under the circumstances.

2. For the partition of said personal property according to the [83] respective rights of the parties hereto, or if parition cannot be had without great prejudice to the owners, then for the sale thereof

Respondent's Exhibit No. 4—(Continued)
and partition of the proceeds according to the respective interests of the parties hereto.

3. For costs of suit and for such other and further relief as to the Court may seem proper in the premises.

JOSEPH E. ALLEN,
Defendant and Cross-
Complainant. [84]

State of California,
County of Inyo—ss.

Joseph E. Allen, being by me first duly sworn, deposes and says: That he is the Defendant and Cross-Complainant in the above-entitled action; that he has read the foregoing Answer and Cross-Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes is to be true.

/s/ JOSEPH E. ALLEN.

Subscribed and sworn to before me this 20th day of February, 1951.

[Seal] /s/ WILLIS SMITH,
Notary Public in and for Said County and State of
California. [85]

Respondent's Exhibit No. 4—(Continued)

Exhibit A

Property Settlement and
Child Custody Agreement

[Identical to Respondent's Exhibit No. 1. See
pages 49 to 62 of this printed record.]

In the Superior Court of the State of California
In and for the County of Inyo

No. 5025

CHRISTINE W. ALLEN,

Plaintiff,

vs.

JOSEPH E. ALLEN,

Defendant.

JOSEPH E. ALLEN,

Cross-Complainant,

vs.

CHRISTINE W. ALLEN,

Cross-Defendant.

ANSWER TO CROSS-COMPLAINT

Comes now cross-defendant, Christine W. Allen,
and answering cross-complainant's alleged cross-
complaint admits, denies and alleges: [95]

I.

Answering paragraph III, page 6, this cross-
defendant denies that during no period of four

Respondent's Exhibit No. 4—(Continued)

successive months did the net profits of the business mentioned average \$700.00 per month; denies that defendant and cross-complainant have attempted to reduce the payments by mutual agreement; denies that no agreement can be reached; denies that defendant and cross-complainant are entitled to a decree and judgment modifying the terms of the agreement referred to.

II.

Denies the allegations contained in Paragraph II, Page 7, of said alleged cross-complaint.

Wherefore, cross-defendant prays judgment as set forth in her original complaint.

/s/ CHRISTINE W. ALLEN.

/s/ JESS G. SUTLIFF,
Attorney for Plaintiff and
Cross-Defendant.

State of California,
County of Los Angeles—ss.

Christine W. Allen, being first duly sworn, deposes and says: That she is the plaintiff and cross-defendant in the above-entitled action; that she has read the foregoing Answer to Cross-Complaint and knows the contents thereof; and that the same is true of her own knowledge, except as the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

/s/ CHRISTINE W. ALLEN.

Respondent's Exhibit No. 4—(Continued)

Subscribed and sworn to before me this 26th day of February, 1951.

ARTHUR S. HIGGINS,

Notary Public in and for Said
County and State.

My Commission Expires March 10, 1952.

Certified true copy.

[Endorsed]: Filed January 31, 1951, County Clerk.

[Endorsed]: Filed June 21, 1951, Referee. [96]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 106, inclusive, contain the original Debtor's Petition; Orders of Adjudication and General Reference; Referee's Certificate on Petition for Review of Order in re Title to a Certain Drug Store Business; Proceedings to Determine Title and Order to Show Cause; Order to Show Cause filed May 24, 1951; Answer to Receiver's Petition for Turnover; Amended Answer to Receiver's Petition for Turnover; Petition to Determine Title to Personal Property and Order to Show

Cause; Order to Show Cause filed June 12, 1951; Petition for Restraining Order and Order to Show Cause; Order to Show Cause filed June 12, 1951; Answer to Trustee's Petition for Restraining Order and Order to Show Cause; Answer to Receiver's Petition to Determine Title to Personal Property and Order to Show Cause; Findings of Fact and Conclusions of Law re: (1) Determination of Title to Personality; (2) Restraining State Court Litigation; Order; Petition for Review of Referee's Order Quieting Title; Respondent's Exhibits 1, 2, 3 and 4; Order on Petition for Review; Notice of Appeal; Cost Bond on Appeal; and Two Designations of Record on Appeal which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 5th day of October, A.D. 1951.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13126. United States Court of Appeals for the Ninth Circuit. Christine Allen, Appellant, vs. Ralph Meyer, Trustee in Bankruptcy of the Estate of Joseph E. Allen, Bankrupt, Appellee. Transcript of Record. Appeal From the United States District Court for the Southern District of California, Central Division.

Filed October 6, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 131261

In the Matter of:

JOSEPH E. ALLEN,

Bankrupt.

STATEMENT OF POINTS AND DESIGNA-
TION OF PORTIONS OF RECORD TO
BE PRINTED

The points on which appellant intends to rely in this Court in this case are as follows:

1. The Court erred in holding that the interest acquired by appellant under the property settlement agreement was an interest in the net worth of the business in question and not an interest in the assets thereof pursuant to the terms of the interlocutory decree of divorce.

2. The Court erred in holding that the appellant did not acquire and does not now own an undivided one-half interest as a tenant in common with the bankrupt in the assets of the business known as Jerry's Drugstore.

3. The Court erred in holding that the conversion of appellant's community property interest in and to the drugstore business as a tenant in common with the bankrupt in and to said business and the assets thereof, was a void transfer as against creditors and the Trustee in bankruptcy on the

ground that the same was not accompanied by an immediate delivery of the assets of said business by the bankrupt to appellant and was not followed by an actual and continued change of possession of said assets. Said holding is not sustained by the referee's findings numbered I and II; the terms of the property settlement agreement; the terms of the interlocutory decree of divorce, or the terms of the final decree of divorce.

4. The Court erred in holding that appellant acquired an interest as a tenant in common in the net worth of said drugstore business by the terms of said property settlement agreement. Said holding is not sustained by referee's finding number I; the terms of said property settlement agreement; the terms of said interlocutory decree of divorce, or the terms of the final decree of divorce.

5. The Court erred in holding that appellant has no right, title, or interest in and to any of the assets of said business and also no right, title, or interest in and to the said drugstore business.

Portions of Record

Only the following portions of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

1. Proceedings to determine title and order to show cause, filed May 24th, 1951.

2. Amended answer to receiver's petition for turnover, filed June 11, 1951.

3. Petition to determine title to personal property and order to show cause, filed June 12, 1951.

4. Petition for restraining order and order to show cause, filed June 12, 1951.

5. Answer to Trustee's petition for restraining order and order to show cause, filed June 15, 1951.

6. Answer to receiver's petition to determine title to personal property and order to show cause, filed June 15, 1951.

7. Findings of fact and conclusions of law, filed July 10, 1951.

8. Order filed July 10, 1951.

9. Petition for review of referee's order quieting title, filed July 18, 1951.

10. Respondent's Exhibits 1, 2, 3, and 4.

11. Order of the above-entitled Court entered July 31, 1951.

12. Notice of appeal.

13. Clerk's certificate.

Dated October 18th, 1951.

HARRY R. ROBERTS, and

JESS G. SUTLIFF,

By /s/ JESS G. SUTLIFF,

Attorneys for Christine Allen.

[Endorsed]: Filed October 19, 1951.

